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MEMORANDUM FOR: Deputy Director of Central Intelligence
FROM : John F. Blake
Deputy Director for Administration
SUBJECT : Legal Defense Fund

1. You have asked that I pursue the matter of establishing a "Legal Defense Fund" and present you with recommendations.

2. On Friday, 12 November 1976, I convened a group consisting of Messrs. Wells, Lapham, Waller, Malanick, Falkiewicz and [] We spent a very constructive and harmonious two hours defining the issue, analyzing the problem, and structuring recommendations. I outline for you below our collective thoughts which have collective agreement.

3. Our plan begins with two questions and then goes on to a series of either assertions or considerations. The two questions, which are now being studied by the Office of General Counsel, are:

a. Is there any legal prohibition to any solicitation of Agency employees?

Headquarters Regulation [] was

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DOJ review(s) completed.

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considered. It states "Government employees are forbidden by law to give presents to official superiors or accept them from employees receiving lower salaries than themselves." While Mr. Lapham will be addressing himself to this, it does not appear that that Headquarters Regulation will be an inhibiting factor.

b. Is it legal to use the time of Government employees or government facilities and premises to conduct such a solicitation as we are considering?

4. We now proceed to the basic ingredients of the proposed program:

a. Funds should be available to retirees as well as serving employees.

b. There are precedents elsewhere for raising legal aid funds.

c. There are precedents within the Agency for solicitation drives.

d. If a drive were to be conducted it must be made absolutely clear that there is not the slightest inference of coercion.

e. For purposes of accountability and public trust it might be better if we encouraged the receipt of checks as opposed to cash.

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f. There should be both an internal solicitation and an external solicitation.

g. We would identify one or two distinguished alumni and ask them to accept the following responsibilities:

- 1) To organize an external solicitation drive.
- 2) To be the initial recipient of all funds realized from the external drive.
- 3) To determine the amount of monies from the fund to be awarded to any eligible recipient. We believe a crucial point in our program is having the disbursement formula and determinations made by individuals other than serving Agency employees. We would leave to the discretion of the external chairperson(s) the selection of any additional colleagues to be associated with the drive and its disbursement administration. Those so chosen should obviously have no possible direct connection with the potential legal case at hand.
- 4) To agree to donate to either PSAS or EAF any funds surplus when the need for their use had expired.

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h. Funds realized should only be used to assist those who are actually indicted and should not be used to help provide legal assistance during grand jury proceedings.

i. While all planning and arrangements for the program should proceed with due haste, the announcement and implementation of the drive should not commence until or before an indictment is issued.

j. The U.S. Civil Service Commission is the point of guidance to federal agencies on the conduct of solicitations. We would be wise to informally inform them of our intent.

i. Additional consideration will have to be given as to the matter of obtaining funds from field personnel.

5. If we embark on this venture, we should be aware that we are establishing a precedent. We also believe that to the degree possible the program should have the best possible understanding of and sympathy from senior Agency management. We would suggest to you that upon the submission of our final program version that you summon a special EAG meeting for its discussion.

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6. I would very much appreciate receipt from you, while we are awaiting receipt of OGC's opinion, your reaction to this proposal and any further guidance you choose to give.

John F. Blake

cc: DDO
General Counsel
Inspector General
Assistant to DCI
(Mr. Falkiewicz)
ADDA
DD/Personnel

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Office of the Attorney General
Washington, D. C.

DDA 75-1832

October 9, 1975

Honorable W. E. Colby
Director
Central Intelligence Agency
Washington, D. C. 20505

Dear Mr. Colby:

I appreciate your letter of September 26, 1975, calling my attention to the need for representation in the John Doe case, and expressing your concern that the 200 present and former employees of the agency who may be called before the Senate Select Committee should be properly represented. I share your concerns and have initiated procedures to provide representation wherever possible for your present and past employees in the John Doe litigation as well as in interviews and testimony before the House and Senate Select Committees on Intelligence.

Unfortunately, the request for representation cannot be approved on a blanket basis. Each individual case requires a separate determination by the Civil Division as to whether representation can be provided and if so, whether it should take the form of a Justice Department attorney or a private attorney retained at Justice Department expense. Enclosed is a letter from Assistant Attorney General Rex E. Lee to your General Counsel which indicates how those procedures can be activated. It is my understanding that requests from your agency for representation are now being processed on a regular basis.

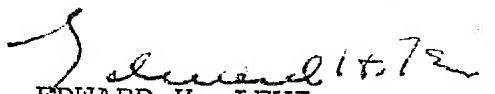
Your inquiry concerning representation of present and former employees in interviews conducted by F.B.I. or Department of Justice officials investigating possible violations

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of federal law raises special problems. Unlike the civil suit, and congressional committee situations, providing representation even by outside counsel in this context places the Department in the untenable position of financing both sides of a criminal investigation. In addition, the presence of a potential criminal penalty arising directly from the facts developed in the interview make it especially important that there be absolutely no suggestion by appearance or otherwise that the employee's counsel is caught between divided loyalties. Finally, as you can imagine, thousands of government employees are interviewed each year for possible involvement in violations of federal law so that providing private representation would place an immense practical burden on the Department's resources.

The Civil Division has never provided either private or Justice Department counsel for F.B.I. or Department of Justice interviews of government employees. The continuing validity of the reasons supporting this practice require me to refuse to provide representation for past or present employees of the CIA in interviews by either the Department of Justice or the F.B.I. in their investigations of possible violations of federal law.

Sincerely,


EDWARD H. LEVI
Attorney General

Enclosure

DDA Distribution:
1 - D/Security
1 - DDA Subject



Department of Justice
Washington, D.C. 20530

ASSISTANT ATTORNEY GENERAL
CIVIL DIVISION

September 26, 1975

Mr. John S. Warner
General Counsel
Central Intelligence Agency
Washington, D. C. 20505

Dear Mr. Warner:

The Department of Justice is now in the process of developing guidelines for the representation of present and former government employees. Pending completion of those guidelines, we have established interim procedures for the expeditious processing of requests for representation in either civil litigation or for appearances before Congressional committees.

All requests for such representation should be made directly to my Special Assistant, Thomas Martin (739-3333). Tom will initiate procedures designed to determine whether counsel can be provided, whether that counsel will be a Justice Department or private attorney, and lastly who that attorney will be. Since these procedures may take as long as 48 hours, it is of the utmost importance that Tom be contacted as soon as the need for representation becomes apparent.

It is my hope that the procedures we have established will insure quick and systematic decisions concerning the representation of your present and former employees.

Sincerely,

REX E. LEE
Assistant Attorney General

10 OCT 1975

9 October 1975

Mr. Blake via Mr. McMahon:

Mr. Rogovin's secretary called at 1612 hours, this date, to relate the following message:

She had just taken a call from Doug Marvin, Office of the Attorney General who stated that the Attorney General is preparing a letter to Mr. Colby which will state that the Department of Justice will represent past and present employees in John Doe cases, as well as in interviews before the House and Senate Select Committees.

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18 SEP 1975

1. As a result of the report of the President's Commission on CIA Activities Within the United States, the Department of Justice and the FBI are investigating the CIA mail intercept program and alleged breaking and entering for possible criminal prosecution. The investigation has now reached the stage where Agency employees, past and present, are being formally sought by the FBI for questioning regarding their personal involvement. These employees acted in good faith in the performance of their duties and in following directions of authorized superiors. It is imperative that they have sound legal advice to protect themselves during such questioning.

2. Because it is a Department of Justice criminal investigation of alleged wrongdoing, the Agency is precluded from providing the necessary legal counsel. To assist the some 200 people who are subject to these interviews, several private attorneys have offered their services to the Agency employees free of charge. While it is uncertain at this time how extensive the legal defense may be in each case, it appears that the situation is sufficiently serious to suggest the need for the assistance of more attorneys. In addition, the trend of the Congressional investigations has encouraged some employees to seek counsel regarding areas in which they are to be questioned. "Pro bono" lawyers would be of great assistance in this regard as well. Finally, there have been a number of civil suits filed against present and former employees for activities growing out of their employment. Normally, the Department of Justice defends such suits at no expense to the employee. Because, however,

these civil suits relate to activities under criminal investigation, the Department currently refuses to defend Agency employees.

3. The CIA Retirement Association feels that it can be of service in identifying lawyers to the Agency who may be willing to help on a "pro bono" basis. Should you know of an experienced trial lawyer within the metropolitan Washington area who would be willing to spare a portion of his time to provide such counsel, then please contact the undersigned who will refer the name to the Agency.

4. In doing this, we can assist in securing appropriate legal assistance for the Agency personnel as well as former employees who may not otherwise be able to afford the expense of legal counsel and in justice should not be so required. Success in rallying behind the Agency in this cause will be a tremendous lift to the morale of the Agency's employees who have continued to carry on their job in spite of the immense pressure and criticism.

5. If the situation develops to the point where some funds may be required to meet expenses associated with further legal defense, then we will address with the membership the best way the Association may help.

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ADD/A:JNM McMahon [redacted] kmg (18 Sep 75)
Orig - destroyed
12 - delivered to [redacted] on 9/18/75 by [redacted]
1 - JNM Chrono w/previous drafts
1 - JFB file

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